

FREDRICK Z. BIERMAN, M.D.
AMRO ALI, M.D. vs WESTCHESTER MEDICAL

September 23, 2020

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1
2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 AMRO ALI, M.D.,

6 Plaintiff,

7 -against- No. 1:19-cv-08324

8 WESTCHESTER MEDICAL CENTER AND NEW YORK

9 MEDICAL COLLEGE,

Defendants.

10 -----x
11
12
13 VIDEOTELECONFERENCED DEPOSITION OF

14 FREDRICK Z. BIERMAN, M.D.

15 Valhalla, New York

16 Wednesday, September 23, 2020
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23

24 Reported by:
Aydil M. Torres, CSR
25 JOB NO. J6033881

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10:04 a.m.

VTC deposition of FREDRICK
Z. BIERMAN, M.D., held at 100 Woods
Road, Valhalla, New York pursuant
to Notice, before Aydil M. Torres,
a Notary Public of the State of
New York.

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A P P E A R A N C E S:

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Attorneys for Plaintiff

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Garden City, New York 11530

BY: PAUL MILLUS, ESQ.

ALSO PRESENT:

Amro Ali, M.D.

Newman Hoffman, Esq.

Daniel Rinaldi, Esq.

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification and the
same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the
form of the question shall be reserved
to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer authorized
to administer an oath, with the same force
and effect as if signed and sworn to before
the Court.

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1
2 F R E D R I C K Z. B I E R M A N,

3 called as a witness, having been
4 duly sworn by a Notary Public, was
5 examined and testified as follows:

6 THE REPORTER: Please state
7 your full name for the record.

8 THE WITNESS: My name IS
9 Frederick Z. Bierman.

10 THE REPORTER: Please state
11 the address you currently located.

12 THE WITNESS: I am at the
13 address for the medical center.
14 It's 100 Woods Road Valhalla, New
15 York. I am in my office at the
16 medical center.

17 EXAMINATION BY

18 MR. SADOWSKI:

19 Q. Good morning, Dr. Bierman. My name
20 is Robert Sadowski. I represent Dr. Amro Ali
21 in his case against Westchester Medical
22 Center and New York Medical College.

23 Have you ever been deposed before?

24 A. Yes.

25 Q. How many times?

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2 A. Twice, maybe.

3 Q. Okay. Have you ever been a
4 plaintiff in a lawsuit?

5 A. No.

6 Q. Have you ever been named a
7 defendant in a lawsuit?

8 A. Yes.

9 Q. When was that?

10 A. In the past. I don't remember the
11 exact dates, but they were in the last twenty
12 years.

13 Q. Okay. How many times have you been
14 named a defendant?

15 A. Twice. Sorry, I have to amend
16 that. Three times.

17 Q. What were the outcomes of those
18 cases?

19 A. One was a defendant verdict. One
20 was a settlement. And the second and third
21 one was a settlement.

22 Q. For today's purposes, let's refresh
23 you on the rules. The most important is that
24 you allow me to finish my question, before
25 you begin to answer it, because the court

1 Fredrick Z. Bierman
2 reporter can only take down one person
3 speaking at a time. If at any time you want
4 to take a break, just let us know. I do ask,
5 though, that if there is a question pending,
6 you answer the question, before we take a
7 break. If at any time you don't understand
8 my question, please let me know. At certain
9 times your Counsel may object to my question.
10 You are to answer the question, unless your
11 Counsel directs you not to answer the
12 question. Do you understand the instructions
13 I have given you?

14 A. I do.

15 Q. Dr. Bierman, what is your
16 profession?

17 A. I am a physician.

18 Q. What kind of medicine do you
19 practice?

20 A. I am board certified in pediatric
21 cardiology and pediatrics.

22 Q. Your first certification was in?

23 A. Pediatric cardiology.

24 Q. Okay.

25 A. Sorry, my first certification was

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2 in pediatrics. Then I was subspecialty
3 certified in pediatric cardiology.

4 Q. Okay, thank you. And where did you
5 graduate from medical school?

6 A. State University of New York
7 Downstate.

8 Q. What year did you graduate?

9 A. 1973.

10 Q. And how long have you been
11 affiliated with Westchester Medical Center?

12 A. Since May of 2011.

13 Q. Where did you practice, prior to
14 Westchester Medical Center?

15 A. North Shore Long Island Jewish
16 Healthcare System.

17 Q. How long were you at Long Island
18 Jewish Healthcare System?

19 A. Twenty years.

20 Q. What is your current position at
21 Westchester Medical Center?

22 A. I am the director of graduate
23 medical education, and the DIO for
24 Westchester Medical Center's sponsoring
25 institution for the ACGME. I am also

1 Fredrick Z. Bierman
2 professor of pediatrics and senior associate
3 dean for graduate medical education for New
4 York Medical College.

5 Q. What does "DIO" stand for?

6 A. "Designated Institutional
7 Official."

8 Q. What does that mean?

9 A. Designated institutional official
10 is a position that has been established by
11 the ACGME, via Accreditation Counsel for
12 Graduate Medical Education in the United
13 States. I am the individual responsible for
14 the administration of graduate medical
15 education that is accredited by ACGME at
16 Westchester Medical Center.

17 Q. Are you the director for -- let me
18 ask you: Do you have any responsibility over
19 the residency programs at Westchester Medical
20 Center?

21 A. Sorry, just repeat that question
22 again.

23 Q. Sure. Do you have any
24 responsibilities in connection with the
25 residency program at Westchester Medical

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2 Center?

3 A. I do.

4 Q. What are those?

5 A. I have to provide oversight and
6 compliance with the ACGME common program
7 requirements specialty program requirements
8 and execution of the respective matches in
9 which those programs engage.

10 Q. Is that true of all residency
11 programs at Westchester Medical Center?

12 A. For those that are located at the
13 medical center, all that are accredited by
14 the ACGME under our sponsorship, I am the
15 DIO. I am not the DIO of student programs.
16 I am the director of graduate medical
17 education for those programs.

18 Q. Which two programs are you not
19 affiliated with?

20 A. No, it's not that I am not
21 "affiliated with." I am not the DIO.

22 Q. I see. Which programs are you not
23 the DIO?

24 A. Ophthalmology, and obstetrics and
25 gynecology.

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2 Q. Why are you not the DIO for those
3 two programs?

4 A. Because when there was a transfer
5 of sponsorship from New York Medical College
6 to Westchester Medical Center, the training
7 programs at Westchester Medical Center
8 campus -- New York Medical College asked to
9 retain sponsorship of those two.

10 Q. Who, if you know, is the DIO for
11 those two programs?

12 A. Dr. Richard McCarrie.

13 Q. Why did New York Medical College
14 retain sponsorship of those two programs?

15 A. Those two programs, the residencies
16 are equally divided in time and educational
17 experience at Westchester Medical Center and
18 Metropolitan Medical Center in New York, and
19 as a result, the medical college asked to
20 retain the sponsorship of those two shared
21 programs.

22 Q. When did it occur that New York
23 Medical College decided to retain sponsorship
24 of those two programs?

25 A. It was part of the academic

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2 affiliation agreement between New York
3 Medical College and Westchester Medical
4 Center, which I believe was executed in -- it
5 was implemented in May of 2017 -- July 1st of
6 2017, I believe. I would have to verify that
7 year.

8 Q. And who was the responsible for
9 making that decision to retain sponsorship
10 with New York Medical College of those two
11 programs?

12 A. The board of trustees of New York
13 Medical College, and the board of trustees of
14 Westchester Medical Center -- WMC Health.

15 Q. In the various positions you've had
16 at Westchester Medical Center, has there been
17 someone who has had a supervisory role over
18 your positions?

19 A. I'm sorry, "supervisor role" over
20 what positions?

21 Q. The various positions you had and
22 responsibilities.

23 A. I work with the executive medical
24 director of Westchester Medical Center, who
25 has oversight of all physicians at the

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2 medical center as executive medical director.

3 Q. Who is that?

4 A. Dr. Renee Garrett.

5 Q. Is there anyone else you work with,
6 in connection with your various
7 responsibilities?

8 A. Is there anyone else I work with?

9 Q. Yes, as a -- someone who has a
10 supervisory role over your activities.

11 A. It would be the board of trustees,
12 the CEO, and -- of Westchester Medical
13 Center, I ultimately have to report to.

14 Q. And the CEO of Westchester Medical
15 Center is who?

16 A. Mr. Michael Israel.

17 Q. Do you know Dr. Amro Ali?

18 A. I have met him.

19 Q. And when did you meet him?

20 A. I think I met him in July -- might
21 have been July of 2018.

22 Q. Do you know on July of 2018, what
23 Dr. Ali's role was at either WMC or New York
24 Medical College?

25 A. I was informed of his role, prior

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2 to the meeting.

3 Q. What were you informed?

4 A. That he had been a volunteer in a
5 research laboratory of New York Medical
6 College, and that he had applied to the
7 ophthalmology residency training program.

8 Q. Did you have any role, in
9 connection with his research work?

10 A. No.

11 Q. When he applied for a residency
12 position, did you have any role in that
13 application?

14 A. In the application -- sorry, you
15 have to clarify.

16 Q. Yeah. In connection with his
17 application for the ophthalmology residency
18 program, did you have any role in reviewing
19 his application?

20 A. I was asked to provide some
21 advisement during his consideration -- during
22 consideration of his application as part of
23 the match process.

24 Q. Can you tell me what your role in
25 providing advisement was?

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2 A. Well, there are general standards
3 that are applied across all specialty and
4 subspecialty programs at Westchester Medical
5 Center, when it comes to the match process.
6 I provide some advice when asked about
7 interpretation of rules of engagement,
8 interpretation of credentials of applicants,
9 interpretation of planning for the match
10 overall.

11 Q. In connection with Dr. Ali's
12 application, what specific advisement role
13 did you have?

14 A. I was asked about his USMLE status
15 by the program director.

16 Q. What is the "USMLE"?

17 A. It's the "United States Medical
18 Licensing Examination."

19 Q. Can you tell me --

20 A. I'm sorry?

21 Q. Can you explain to me what the
22 United States Medical Licensing Examination
23 is?

24 A. It's a three-step examination that
25 begins in medical school and is, typically,

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2 completed by the end of the first years of
3 residency. It assesses physician's ability
4 to apply knowledge, concepts and principles
5 and demonstrate fundamental patient-centered
6 skills.

7 Q. Let's look at some documents. Can
8 everyone see the document?

9 A. I see a list of documents dated
10 September 22nd, but I don't see a document.

11 Q. I see -- okay. Let me do this,
12 again.

13 Do you see the exhibit now?

14 A. Same list of documents dated
15 September 22nd, 2020.

16 Q. I see. Hold on. Is the exhibit up
17 yet?

18 A. No.

19 Q. This one. Yes, that's it. Now
20 "share."

21 How about now?

22 A. There is now a document up there.
23 It is -- if you could make it larger, it
24 would be easier for me to read it.

25 Why don't you press the "plus"

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button?

Q. Got it. Got it. Okay, this is -- this document marked Wandel 1 for identification. It is a letter from ACGME directed to that Thaddeus Wandel director of Westchester Medical Center. If we look down to the -- it speaks to the residency review committee for ophthalmology, and below that, there are resolve citations. The first resolved citation is "scholarly activities since 11/1/2012, status, resolved." It states, "Common program requirement 2B, 5B, 1 -- some members of the faculty should also demonstrate scholarship through peer-reviewed funding. The information provided did not demonstrate compliance with the requirement. Specifically, Dr. Schwartzman has a program project grant entitled 'Hormonal Regulation of Blood Pressure,' but this grant is associated with his position in another department, cell biology, and there is no ophthalmology involvement. No other peer funding for grants were identified in the program information form."

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2 Dr. Bierman, were you aware of this
3 citation from ACGME?

4 A. In the document you just provided,
5 what I am aware of is that it was resolved.
6 It was no longer a citation.

7 Q. But were you aware of the citation
8 when it was made?

9 A. I would have been aware of the
10 citation, before it was resolved, and what
11 you are citing here is the resolution by the
12 program of this citation, from the standpoint
13 of the ACGME.

14 Q. I see. But I take it from your
15 answer that you were aware of the citation,
16 before it was resolved?

17 A. Yes.

18 Q. Okay. Can you explain what that
19 citation -- what that citation was for?

20 A. That type of citation can have
21 several interpretations. I think the one
22 that they, specifically, were referencing was
23 one of the scholastic activities that Dr.
24 Schwartzman was engaged in was not directly
25 related to ophthalmology. It was scholarly

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2 work, but not specific to ophthalmology.

3 Q. Is it fair to say that the ACGME
4 was citing the ophthalmology department for
5 its failure to have sufficient scholarly
6 work?

7 A. In that letter, the ACGME was
8 referencing resolution of the fact that Dr.
9 Schwartzman's grant was not directly related
10 to ophthalmology.

11 Q. And my question is: Is it fair to
12 say that the citation that was resolved in
13 that letter had to do with the fact that
14 there was insufficient scholarly work by the
15 ophthalmology department?

16 A. What do you mean by "insufficient"?

17 Q. Well, the citation has -- was for a
18 work not having been done by the
19 ophthalmology department, and the citation
20 says, "The faculty should also demonstrate
21 scholarship through peer-reviewing funding."

22 A. Could you please -- excuse me.
23 Since you are referencing it, can you put it
24 back up again?

25 Q. Yes.

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2 A. Sir, you may be muted. I am not
3 hearing anything.

4 Q. Yes, I have muted for a second
5 while I resolve the issue.

6 Do you see the document now?

7 A. I do not.

8 Q. Do you see it now?

9 A. Is this the same date -- same
10 document you showed me before?

11 Q. Yes, we will go up. It's Wandel
12 Number 1, from January 14, 2015.

13 A. Thank you.

14 Q. And we were reviewing this resolved
15 citation. It says, "Some members of faculty
16 should also demonstrate scholarship through
17 peer-reviewed funding."

18 A. Yes.

19 Q. That's the citation?

20 A. That is specific to Dr.
21 Schwartzman's grant. And it refers to,
22 actually, Dr. Schwartzman, in her position,
23 in another department.

24 Q. Right. And it has mention that
25 there was "no ophthalmology involvement" in

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2 that project?

3 A. At the time it was referenced, it
4 was not, based on that statement.

5 Q. Okay, thank you.

6 Can you see this document
7 identified as Ali Number 9?

8 A. I do.

9 Q. Okay. Can you tell me who is
10 Raymond Wong?

11 A. He is -- Dr. Raymond Wong is the
12 site director of for ophthalmology at
13 Metropolitan Medical Center.

14 Q. Okay. And who is, if you know,
15 Marie Rivera?

16 A. I don't -- I don't believe I know
17 Marie Rivera.

18 Q. Who is Sansar Sharma?

19 A. He is -- he has a laboratory at New
20 York Medical College. It's a
21 neuroophthalmology laboratory, basic science
22 lab.

23 Q. Okay. And you see Dr. Ali is also
24 cc'd on this e-mail, correct?

25 A. Well, that's an e-mail to

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2 Amro.Ali9@icloud.com.

3 Q. I will represent to you that that
4 is an e-mail address used by Dr. Amro Ali. I
5 will scroll down this e-mail chain, which
6 consists of three pages. For the record,
7 these pages are Bates-stamped NYMC, WMC 00078
8 through 80.

9 Here, Dr. Raymond Wong in this
10 chain is writing Dean Miller, and who is Dean
11 Miller?

12 A. At that time, I believe, Dr. Miller
13 was still in his role as dean of the New York
14 Medical College School of Medicine.

15 Q. Okay. And the e-mail from Dr.
16 Wong, interim chairman, says, "We would like
17 to bring Dr. Amro Ali on board in the
18 department of ophthalmology as a full-time
19 instructor. He is an experienced researcher
20 and he will be submitting a grant and IRB
21 proposals. This is in line with our recent
22 initiatives to enhance research at the SOM."
23 Is it correct that "SOM" -- is that "School
24 of Medicine"?

25 A. That's the usual abbreviation, yes.

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2 Q. Okay. Thank you.

3 Were you aware of Dr. Ali coming on
4 board as a full-time instructor?

5 A. No, that was for the School of
6 Medicine. I would not necessarily be aware
7 of all of the individuals who are appointed
8 at the instructor rank at the School of
9 Medicine.

10 Q. Okay. Scrolling down through this.
11 That's enough with this exhibit.

12 Let's go to the next exhibit.

13 Okay, can you all see what I have put up as
14 Ali Exhibit 5? Is it large enough or should
15 I make it larger?

16 A. Make it slightly larger, please,
17 and if you scroll down. Thank you.

18 Q. Okay. I am showing you what's been
19 marked as Ali 5, which is a letter from "New
20 York Medical College to Dr. Amro Ali, MD,
21 from D. Douglas Miller, Dean, School of
22 Medicine." And in this, Dr. Ali is being
23 informed that he is appointed as a full-time
24 faculty member of New York Medical College
25 School of Medicine. Do you see that?

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2 A. I do.

3 Q. As a faculty member of the New York
4 Medical College School of Medicine, are
5 faculty members subject to the rules and
6 policies associated with that institution?

7 A. If they accept an appointment at
8 the medical school, they are subject to the
9 rules of the medical school appointments.

10 Q. Would that include the documents
11 that are referenced here, "NYMCSOM policies
12 and procedures"?

13 A. I'm sorry, that's -- that's a very
14 generic title for policies and procedures. I
15 think that's a compendium of the school's
16 policies and procedures.

17 Q. Right. And as a faculty member,
18 would Dr. Ali be subject to the School of
19 Medicine's policies and procedures?

20 A. As a member of the faculty, yes.

21 Q. Okay, thank you.

22 Dr. Bierman, are you aware of what
23 Dr. Ali -- what responsibilities and work he
24 was to undertake as a faculty member of the
25 School of Medicine?

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2 A. No. Not until after he applied for
3 the ophthalmology residency.

4 Q. Okay. Once he applied to the
5 ophthalmology -- for the ophthalmology
6 residency, did you become aware of his duties
7 and responsibilities at the medical college?

8 A. I became aware of it after I was
9 informed about his credentials regarding his
10 application for the ophthalmology residency.
11 I wasn't made aware of them, specific, to his
12 appointment to the school.

13 Q. Okay. Were you aware of the
14 research work that Dr. Ali performed at the
15 School of Medicine?

16 A. I became aware of it when I was
17 asked to review his credentials for the
18 application that he submitted to the
19 ophthalmology residency.

20 Q. Okay. When did you review his
21 application?

22 A. It was -- I -- I -- I can't say the
23 specific date, but it would have been
24 temporally related to the time of his
25 application and interview for the

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2 ophthalmology residency.

3 Q. Okay. Did you review his full
4 application?

5 A. I reviewed the application that was
6 submitted to the program. That is the
7 customary documentation that's reviewed when
8 there are questions regarding an applicant.

9 Q. And what documents are included
10 with the application?

11 A. It includes a format similar to the
12 -- what's called a "gear assets," the
13 application that summarizes the applicant's
14 curriculum vitae, their medical school, what
15 school they attended, what courses they took,
16 what grades they achieved, it would include
17 verification of graduation from the medical
18 school, it would include records specific to
19 USMLE test scores, and letters of
20 recommendations.

21 Q. Okay. When you -- the first time
22 you reviewed his application, was that an
23 application that was made outside of the San
24 Francisco Match?

25 A. I think it was temporally related

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2 to that. It was probably around December,
3 and that was when the match took place. San
4 Francisco Match, typically, takes place
5 probably around December 2016.

6 Q. December of 2016?

7 A. Yeah.

8 Q. Do you review all applications for
9 the residency programs?

10 A. No.

11 Q. Why, in particular, were you
12 reviewing Dr. Ali's application?

13 A. My customary practice is that at
14 the solicitation of the program directors who
15 are reviewing the applications, if there is
16 an application that appears to be incomplete
17 in some way, they will ask me to review the
18 application with them.

19 Q. And was there something in Dr.
20 Ali's application that was incomplete?

21 A. In his particular application, it
22 was a combination of being incomplete, and
23 certain credentials being quite delayed.

24 Q. Okay. First off, what was
25 incomplete?

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2 A. His USMLE, his United States
3 Medical Licensing exams.

4 Q. There are, I understand, three
5 steps to the USMLE; is that correct?

6 A. Yes.

7 Q. Which steps were incomplete?

8 A. It was the final step, Step 3.

9 Q. Step 3, okay. And what -- you
10 mentioned there was something that was
11 delayed?

12 A. Dr. Ali had completed one year, I
13 believe, it was a preliminary general surgery
14 residency at North Shore University Hospital
15 in academic year of 2002, 2003, and had not
16 continued in an accredited residency
17 following that. Until it was brought to my
18 attention in 2016.

19 Q. Why do you characterize that as
20 "delayed"?

21 A. It's customary that the USMLE Step
22 3 is completed at the end of the first-year
23 of residency. In some situations, it may be
24 completed in the second -- end of the second
25 year, in isolated cases, it may be completed

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2 sometime during the third year. I have never
3 encountered someone who had not completed it
4 for thirteen years after their first-year of
5 residency. So that was why it was noted as
6 an unusual find in the application.

7 Q. And who brought Dr. Ali's
8 application to your attention?

9 A. I believe it was Dr. Tad Wandel,
10 Thaddeus Wandel.

11 Q. Do you see what I have on screen
12 now, Exhibit Wandel 3?

13 A. Yes.

14 Q. Who is referenced here, "Dear
15 Chairperson."

16 Who is that, at the time?

17 A. I am not sure.

18 Q. Okay.

19 A. It sounds like it's a generic --
20 not specific to an individual reference.

21 Q. Okay. Have you ever seen this
22 document before?

23 A. Can you show the rest of the
24 document, please?

25 Q. Sure.

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2 A. And signature.

3 Q. Yes, it's a two page document.

4 A. Can you go on to page 2?

5 Q. Yes, there we are on page 2.

6 A. Okay.

7 Q. All right. Now, let me ask you:

8 Have you seen this document before?

9 A. I believe, I have.

10 Q. Was it part of Dr. Ali's residency
11 application?

12 A. I don't know the total context in
13 which I saw it. I know I saw it -- it may
14 have been part of his application. I just
15 don't recall that part.

16 Q. Okay. The first line of Dr.
17 Wandel's letter says, "It is with great
18 pleasure that I can highly recommend Dr. Ali
19 for a PGY2 position as a resident in
20 ophthalmology." Would you agree with me that
21 Dr. Wandel is recommending Dr. Ali for a
22 position as a resident in ophthalmology?

23 A. I think that statement stands.

24 Q. Okay. Dr. Wandel goes on to say,
25 "I have known Dr. Ali for over a year. He is

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1 Fredrick Z. Bierman
2 a clinical instructor and has worked with Dr.
3 Sansar Sharma in clinical and basic
4 ophthalmology research projects. He sets
5 himself apart from other candidates for a
6 residency position by his dedication and
7 willingness to help in all aspects of
8 teaching, his development of research
9 projects that involve residents and his
10 desire to learn. When you review his CV, his
11 fellowships in uveitis, retina and
12 neuroophthalmology places him on a level
13 where he can lecture on these subspecialties.
14 Indeed, he volunteered and has started a
15 series of lectures that will review the basic
16 science volume 9, 'Ocular Inflammation,' in
17 our basic science course. He has ten
18 peer-reviewed publications and a similar
19 number of posters and presentations." And it
20 goes on to speak about his "integrity,
21 kindness, and respect for others."

22 Do you recall reviewing this
23 recommendation at some point when you were
24 reviewing Dr. Ali's application for residency
25 at Westchester Medical Center?

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2 A. Yes.

3 Q. Okay. Just looking on through the
4 remainder of the letter, it doesn't say
5 anything in this letter about Dr. Ali's
6 status, in connection with the USMLE,
7 correct?

8 A. The content that you showed me, it
9 doesn't say anything there.

10 Q. Okay. Showing you now what has
11 been marked as Sharma 4, is a letter from New
12 York Medical College, directed to
13 "Chairperson Resident Selection Committee,"
14 dated "September 14, 2016." And just let me
15 scroll down a bit. This is signed by Dr.
16 Sansar Sharma. And can you tell me, have you
17 seen this document before?

18 A. Yes.

19 Q. And when was that, that you saw
20 this document?

21 A. In the review I referenced earlier.

22 Q. Okay. And the time frame for that
23 was?

24 A. Same time frame I referenced
25 earlier.

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1 Fredrick Z. Bierman

2 Q. That was December of 2016?

3 A. That was in the context of that
4 review.

5 Q. Remind me again when that was.

6 A. Can I ask the court report -- I
7 think I already identify the date, didn't I?

8 Q. I think you identified the month?

9 A. And then you asked me, "Was it
10 2016?" And I said it was.

11 Q. Okay. So you just to be clear, so
12 you reviewed this in December of 2016?

13 A. In that time frame, it was brought
14 to my attention, a discussion of this
15 application.

16 Q. Okay. Showing you now what has
17 been marked as Wandel 4, which is an e-mail
18 from you to Dr. Wandel, dated Wednesday,
19 December 21st, 2016, it has the subject
20 "ophthalmology residency, 2016, 2017, final
21 application, Amro Ali." It has tracking
22 information and it goes on to read, "I cannot
23 locate the applicant Step 3 USMLE report. Do
24 you have a copy? I also noted that his
25 internship was in general surgery. Was he a

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1 Fredrick Z. Bierman
2 preliminary or categorical year resident?"
3 Signed by you.

4 In this e-mail, are you asking --
5 you are asking Dr. Wandel to see Dr. Ali's
6 Step 3 USMLE report, correct?

7 A. I was asking Dr. Wandel if he had a
8 copy of the USMLE report that would
9 customarily be included in this type of
10 application. In the documents I had, I could
11 not identify it, so I was simply asking him
12 if he could provide it to me.

13 Q. When you say, this kind of
14 application, are you differentiating this
15 application from some other type of
16 application?

17 A. It was an application for a
18 residency program being conducted by the San
19 Francisco Match, and I just wanted to make
20 sure I had all the documents.

21 Q. Do all resident applications -- are
22 they to contain a Step 3 USMLE report?

23 A. No.

24 Q. Okay. Why were you requesting Dr.
25 Ali's Step 3 USMLE report, when it's not

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2 always required in a resident application?

3 A. Dr. Ali had completed his
4 first-year of residency thirteen years
5 earlier, and I -- my expectation was that in
6 that thirteen-year interval, he would have
7 successfully completed Step 3. That's why I
8 believed I should have been able to identify
9 his USMLE report for Step 3.

10 Q. All right. Understood.

11 MR. MILLUS: Rob, we've been
12 going an hour. Can we take five
13 minutes to stretch our legs?

14 MR. SADOWSKI: Sure, let's
15 take five.

16 MR. MILLUS: Thank you.

17 MR. SADOWSKI: Actually,
18 let's make it fifteen.

19 (Whereupon, a recess was
20 taken at this time.)

21 BY MR. SADOWSKI:

22 (Bierman Exhibit 3, Meeting
23 Minutes, marked for
24 identification, as of this
25 date.)

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1 Fredrick Z. Bierman

2 Q. Okay, we are all back. I will put
3 up a document. All right, everyone, I put up
4 an exhibit marked Bierman 3 for
5 identification, the title of which is
6 "Meeting minutes, dated July 20, 2018, time
7 12:00 p.m., attendees, Amro Ali, MD, Fredrick
8 Bierman, MD, Kelly Hutcheson, MD, Thaddeus
9 Wandel, MD, and Michelle Hodge, paren, note
10 taker, close paren."

11 And let me scroll down through the
12 document for you, Dr. Bierman, and ask you --
13 and please, you know, I can't put the full
14 document in front of you at a time. Just for
15 reference, this is Bates-stamped
16 NYMCWMC001781.

17 Dr. Bierman, do you know what this
18 document is?

19 A. It appears to be a summary of a
20 meeting. And it's -- the date is July 20,
21 2018.

22 Q. And Michelle Hodge, who is she?

23 A. I think she, at the time, was Dr.
24 Kelly Hutcheson's secretary.

25 Q. Okay. When you have meetings with

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1 Fredrick Z. Bierman

2 Dr. Hutcheson, is there, ordinarily,
3 attendance by Nicole Hodge as a note taker?

4 A. It we're keeping minutes of any
5 particular meeting, we may have an individual
6 designated to record the minutes.

7 Q. Okay. What determines whether you
8 have recorded minutes or not?

9 A. The nature of the meeting. Content
10 of the meeting.

11 Q. Okay. Have you ever reviewed this
12 document?

13 A. I have.

14 Q. Okay. And is it -- after your
15 review, did you determine it was accurate?

16 A. I can't determine that all the
17 details are accurate.

18 Q. Would you like to -- an opportunity
19 to review it all now?

20 A. No, I just -- this was a meeting
21 that took place in 20 -- July of 2018, and to
22 the best of my recollection, this is a
23 general account of the meeting.

24 Q. Okay. And upon your review,
25 nothing jumped out to you as inaccurate?

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1 Fredrick Z. Bierman

2 A. Well, could you go to the bottom of
3 it?

4 Q. Okay, this is page 1, this is page
5 2, and this is -- let's see. We've got page
6 3.

7 A. It's not signed, as most minutes
8 would be signed, and I am not sure about that
9 date of "December 2015" that's referenced in
10 the beginning.

11 Q. Okay. Anything else you note about
12 it?

13 A. Not in the brief time I have had to
14 look at it at the moment, no.

15 Q. Okay. Would you like more time?

16 A. Why don't you ask me, you know,
17 what you would like me to respond to, and
18 perhaps we can go through the letter in that
19 sequence?

20 Q. Let me see if I can -- this
21 statement here, "Dr. Bierman countered that
22 this is a requirement for IMG." That
23 requirement, is that the successful
24 completion of the Step 3 -- the Step 3
25 examination?

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2 A. I would question the accuracy of
3 that statement. We don't have a stipulation
4 that discriminates between international and
5 medical American graduates.

6 Q. Do you deny that you made that
7 statement?

8 A. I can't verify it. All I can say
9 is that's not our practice at the medical
10 center.

11 Q. Thank you. Showing you what's been
12 marked as Ali 14, which appears to be a form
13 entitled "ophthalmology residency training
14 program, ACG24031107." Is this a form that
15 Westchester Medical Center Medical Center
16 uses in its residency application?

17 A. It's a form that's provided at the
18 time of the -- I believe it's when the
19 applicants come in for an interview, it's a
20 verification for purposes of the ACGME that
21 there is been a review of the stipends and
22 benefits and requirements for applicants to a
23 program.

24 Q. My question is much simpler: Is it
25 a form that Westchester Medical Center uses

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2 in its residents applications?

3 A. It's a form -- in this case, it's
4 Westchester Medical Center and Metropolitan
5 Hospital used for a training program that
6 jointly applies to the two medical centers.

7 Q. Okay, so this is a form used by
8 those two medical centers?

9 A. Yes, for applicants, yes.

10 Q. Okay, thank you. Showing you
11 what's been marked as Ali 23, it's "WMC
12 Health, Westchester Medical Center,
13 Westchester Medical Center Resident, slash,
14 Fellow Agreement, terms of appointment,
15 policies and procedures, 2016 through 2017."
16 Are you familiar with this document?

17 A. Well, that's the cover page. We
18 have policies and procedures that were in
19 place.

20 Q. And is this a reflection of the
21 policies and procedures that were in place
22 2016/2017?

23 A. I apologize. That's the cover
24 page. I would have to see the policies and
25 procedures.

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1 Fredrick Z. Bierman

2 Q. All right. Let's -- it's a very
3 long document, but I want to take you
4 particularly to page 40. This is, I will
5 represent to you, a page -- that's not what I
6 want. I will represent that this is page 40
7 of the document marked Ali 23, Westchester
8 Medical Center policies and procedures, and
9 this is page 40 of that document, which is
10 Bates-stamped NYMCWMC00044, and looking up at
11 the policy, "subject advancement in training
12 level USMLE or complex Step 3 requirement."
13 Is this, to your knowledge, a statement of
14 the policy of Westchester Medical Center, as
15 it pertains to the residency program?

16 A. I think it's a statement of the
17 policy, a general statement. This is a
18 statement -- this is a policy that is
19 applied, in general, to individuals who are
20 following a customary trajectory for their
21 medical education and their residency
22 training.

23 Q. Thank you, Doctor. Showing you now
24 what has been marked Ali 1, this is "New York
25 Medical College GME policy, USMLE Step 3."

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2 Are you familiar with this policy?

3 A. Yes.

4 Q. When Dr. Hutcheson came to
5 Westchester Medical Center, did she bring
6 with her a gentleman whom she had worked with
7 in Dohar, Qatar, who then became a resident
8 in the ophthalmology department?

9 A. That, I don't -- I don't recall
10 that. I -- -- I don't know if anyone was
11 recruited specific to Dr. Hutcheson. There
12 may have been an applicant who came to the
13 medical center from Qatar. I just don't
14 recall. I would have to review the rosters.

15 Q. Okay. From time to time, does the
16 ophthalmology department receive private
17 donations?

18 A. I have no idea. You would have to
19 speak to the foundations office about that.

20 Q. Okay. Are you aware of residents
21 named Dr. Dose?

22 A. Dose?

23 Q. Yes.

24 A. How do you spell that?

25 Q. D-O-S-S.

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1 Fredrick Z. Bierman

2 A. Yeah. I believe that's the
3 spelling of the name.

4 Q. Okay. Are they a brother and
5 sister who are residents in the ophthalmology
6 department?

7 A. There were two individuals by the
8 name of Doss that did residencies in
9 ophthalmology.

10 Q. Do you know what years they were?

11 A. The gentleman just graduated, and
12 the -- I believe, it was his sister, she, I
13 think, graduated two years ago. I would have
14 look at the rosters.

15 Q. Okay. Do you know that the Doss
16 family made contributions to the
17 ophthalmology department?

18 A. I do not.

19 Q. Okay. Thank you. I have no
20 further questions at this time.

21 MR. MILLUS: And I have no
22 questions of the witness.

23 MR. SADOWSKI: Thank you
24 very much.

25 THE WITNESS: Thank you.

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Fredrick Z. Bierman

Wish everyone well.

MR. SADOWSKI: Stay safe.

-oOo-

(Whereupon, the examination
of FREDRICK Z. BIERMAN, M.D., was
adjourned at 11:40 a.m.)

FREDRICK Z. BIERMAN, M.D.

Subscribed and sworn to
before me this day
of , 2020.

NOTARY PUBLIC

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----- I N D E X -----

WITNESS	EXAMINATION BY	PAGE
FREDRICK Z. BIERMAN, M.D.		
	MR. SADOWSKI	5

----- EXHIBITS -----

BIERMAN	FOR ID.
Exhibit 1 Meeting Minutes	35

(Exhibit digitally retained by court
reporter.)

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C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

I, AYDIL M. TORRES, a Notary Public
within and for the State of New York, do
hereby certify:

That FREDRICK Z. BIERMAN, M.D., the
witness whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true record of the testimony
given by the witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 23rd day of September, 2020.

Aydil M. Torres

AYDIL M. TORRES

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DEPOSITION ERRATA SHEET

Our Assignment No. J6033881

Case Caption: AMRO ALI, M.D. vs.

WESTCHESTER MEDICAL CENTER, ET. AL

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury

That I have read the entire transcript of

My Deposition taken in the captioned matter

Or the same has been read to me, and

The same is true and accurate, save and

Except for changes and/or corrections, if

Any, as indicated by me on the DEPOSITION

ERRATA SHEET hereof, with the understanding

That I offer these changes as if still under

Oath.

FREDRICK Z. BIERMAN, M.D.

Subscribed and sworn to on the _____ day of

_____, 20____ before me,

Notary Public,

In and for the State of _____

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DEPOSITION ERRATA SHEET

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